

RICHARD A. JONES, JR.,	:	Order Docketing Appeal and
Appellant	:	Affirming Decision
	:	
v.	:	
	:	Docket No. IBIA 97-109-A
ACTING MINNEAPOLIS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	July 14, 1997

On March 20, 1997, the Board of Indian Appeals (Board) received a notice of appeal signed by Richard A. Jones, Jr. (Appellant), as Chairman, Local Indian Council. By order dated March 24, 1997, the Board informed Appellant that there were several problems with the appeal and gave him an opportunity to address those problems.

Appellant's response was timely received on June 20, 1997. Most of the materials which Appellant submitted at that time were duplicates of previous submissions which had not addressed the problems the Board had noted. However, a letter dated May 24, 1997, did address those problems.

The first problem identified was that Appellant had not indicated what decision he was appealing. Appellant has now indicated that he is appealing a February 20, 1997, letter written by the Acting Minneapolis Area Director, Bureau of Indian Affairs (Area Director; BIA). In this letter, the Area Director declined to call a Secretarial election for the removal of a member of the Leech Lake Reservation Tribal Council. The Leech Lake Band (Band) is a constituent band of the Minnesota Chippewa Tribe (Tribe).

The second problem concerned Appellant's failure to serve interested parties. The Board concludes that Appellant has now served interested parties.

The third problem concerned Appellant's standing to bring this appeal. In his May 24, 1997, letter, Appellant, first states that he is Ojibwe and an enrolled tribal member. He then claims rights under Article XIII of the Tribe's Revised Constitution. Article XIII, Rights of Members, provides:

All members of the Minnesota Chippewa Tribe shall be accorded by the governing body equal rights, equal protection, and equal opportunities to participate in the economic resources and activities of the Tribe, and no member shall be denied any of the constitutional rights or guarantees enjoyed by other citizens of the United States, including but not limited to freedom of religion and conscience, freedom of speech, the right to orderly association or assembly, the right to petition for action or the redress of grievances, and due process of law.

The Board notes that Appellant seeks action by BIA under Article X, Section 5, of the Tribe's Constitution, which provides:

In the event the Reservation Business Committee fails to act as provided in Sections 3 and 4 of this Article [in response to a petition for removal of a member of the Reservation Business Committee], the Reservation membership may, by petition supported by the signatures of no less than 20 percent of the eligible resident voters, appeal to the Secretary of the Interior. If the Secretary deems the charges substantial, he shall call an election for the purpose of placing the matter [of removal] before the Reservation electorate for their final decision.

A decision as to whether or not Appellant has standing as a tribal member to bring an appeal under either Article X, Section 5, or Article XIII of the Tribe's Constitution would require the Board to interpret those provisions in the absence of a tribal interpretation. In this particular case, the Board finds it need not interpret these provisions because it concludes that, even if Appellant has standing, it would not disturb the Area Director's decision. Under these circumstances, the Board also concludes that this appeal can and should be addressed without additional delay.

On appeal, Appellant contends that a Secretarial election should have been called because the petition presented to BIA was valid and set forth adequate grounds for removal.

In his February 20, 1997, letter, the Area Director found that, when it received the petition, the Tribal Council scheduled a hearing, verified the signatures on the petition, and received comments from the accused councilman. He further found that, following this review, the Tribal Council concluded that the petition contained the necessary number of signatures, but that the charges upon which it was based were a matter of public record, had occurred prior to the most recent regular tribal election, and had been fully aired during that election. The Area Director stated that the Tribal Council dismissed the petition, declined to take further action against the accused councilman, and canceled the hearing.

Citing Wadena v. Acting Minneapolis Area Director, 30 IBIA 130 (1996), the Area Director noted that, when he received the petition for a Secretarial election, he requested an interpretation of Article X from the Tribal Executive Committee in accordance with Tribal Constitutional Interpretation No. 1-80. Because his request had been pending for 30 days without reply, the Area Director determined that he would have to issue a decision regarding the petition without a tribal interpretation and based upon his understanding of Article X. He cited Cheyenne River Sioux Tribe v. Aberdeen Area Director, 24 IBIA 55 (1993), for the proposition that he was required to undertake his review in a way that avoided unnecessary interference with tribal self-government. The Area Director held:

Section 3 of the Constitution requires removal or a recall election only if the Tribal Council determines that the accused has failed to answer the charges to its satisfaction. A Secretarial election is required by Section 5 only when the Tribal

Council failed to act as provided for in Sections 3 and 4 and when the charges presented are "substantial."

Our review indicates that the Tribal Council acted on the petition. Resolution No. 97-69 shows that the Tribal Council reviewed the charges against [the accused councilman], considered the facts and circumstances upon which the charges are based, and dismissed the petition. We believe that the Tribal Council's review, consideration and dismissal actions constitute the "action" on the petition that satisfies the requirements in Article X, Section 3.

Further, there is no dispute as to the facts underlying the charges in the petition. The charges are based on acts taken in 1988. Although the acts were subsequently widely known in the community, [the accused councilman] was reelected by his constituent district in 1996. Based on these undisputed facts, \* \* \* [l]ike the Tribal Council, we are persuaded that the tribal electorate has already expressed its will in this matter. Thus, we also deem the charges contained in the petition to be **not** "substantial" as that term is used in Section 5.

Decision at 3.

Like the Area Director, the Board is reticent to interpret the Tribe's Constitution in the absence of an interpretation from the Tribal Executive Committee. However, Article X, Section 5, vests the Secretary with significant responsibilities. In the absence of a tribal interpretation of Article X, Section 5, the Board concludes that the Secretary has not only the authority, but also the duty, to interpret this section as necessary to carry out those responsibilities.

The Board concludes that the Area Director properly considered both the tribal response to the petition presented to it and the facts of the matter in determining whether or not a Secretarial election should be called. It further concludes that the Area Director's decision that a Secretarial election should not be called under the circumstances of this case was reasonable.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 C.F.R. § 4.1, this appeal from the Acting Minneapolis Area Director's February 20, 1997, decision is docketed and that decision is affirmed.

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Kathryn A. Lynn  
Chief Administrative Judge

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Anita Vogt  
Administrative Judge